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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,786	03/13/2001	Ronald Samuel Blackhurst	3522 P 003	2836

26967 7590 05/20/2003

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EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 05/20/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/805,768

Applicant(s)

TRUONG ET AL.

Examiner

David L. Sorkin

Art Unit

1723

-- Th MAILING DATE of this communication appears on the cover sheet with th correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson (US 4,294,548). Regarding claim 1, Watson ('548) discloses a barrel mixer comprising a rotary mixer barrel (25), a support for the rotary mixer barrel, the support comprising a tipping arrangement for the rotary mixer barrel between a mixing position in which the rotary mixer barrel is angled so as to retain its contents and a tipping position in which the rotary mixer barrel is angled so that that its contents are poured out, the support further comprising wheel (26) disposed proximate a bottom portion of the support; a motor (1) having an output shaft (8) aligned perpendicular to an axis of rotation of the rotary mixer barrel; a mounting plate abutting the motor and surrounding the motor output shaft (see Fig. 2, between the motor (1) and pulley (16)); and a transmission (6,7,9,11,12,13,14,15,16,17,18) mounted on the support for rotating the rotary barrel, the transmission including step-down gearing between the motor and the rotary mixer barrel, the motor and gearing tipping with the rotary mixer barrel when the support is moved between the mixing position and the pouring position, wherein the motor and transmission are disposed substantially behind the wheel such that the motor and transmission are disposed ant eh same side of the support; wherein the support

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comprises a resting surface (30) extending in a direction opposite of the rotary mixer barrel and behind the wheels such that when the mixer is in the mixing position the mixer rests upon the resting surface and a foot (29) extends beyond the wheel of the mixer such that when the mixer is in the pouring position the mixer rests upon the foot (see col. 2, lines 55-59). Watson ('548) discloses a wheel (26), rather than "wheels" as claimed. However, it is considered that it would have been obvious to one of ordinary skill in the art to have used an additional wheel, for example for additional support. See *St. Regis Paper Co. v. Bemis. Co., Inc.*, 193 USPQ 8, 11 (7th Cir. 1977) and *In re Harza*, 124 USPQ 378 (CCPA 1960) regarding the obviousness of duplicating parts.

Regarding claim 4, the motor is an electric motor (see col. 1, lines 62-64). Regarding claim 6, Watson ('548) does not explicitly discuss disassembly of the apparatus; however, it has been held that making parts separable is obvious (*In re Dulberg*, 129 USPQ 348).

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watson (US 4,294,548) in view of Halsted (US 5,492,401). The motor of Watson ('548) discussed above with regard to claim 1 is not an internal combustion motor. However, it is considered that it would have been obvious to one of ordinary skill in the art to have replaced the motor of Watson ('548) with an internal combustion motor because Halsted ('401) teaches that electric and internal combustion motors are alternative means for powering rotary barrel mixers (see col. 6, lines 12-17).

R sponse to Arguments

4. Applicant's arguments focus upon the "mounting plate" required by claim 1. Applicant states that "[t]he structure shown in Fig. 2 of Watson ['548] to which the Examiner refers is one side of a transmission casing". While applicant's statement may be true, this does not exclude the structure for the scope of "a mounting plate". In fact, Fig. 2, shows a bolt passing through said mounting plate and threaded into bracket 5. The motor abuts the mounting plate as claimed and the mounting plate surrounds the motor output shaft as claimed. In summary, applicant has not pointed out any difference between the claimed plate and that of Watson ('548).

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

May 16, 2003


TONY G. SOOHOO
PRIMARY EXAMINER